

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

2. Complainant's national origin is Mexico and her ancestry is Hispanic.
3. Complainant began her employment with Respondent on July 31, 1989. At all relevant times, Complainant's position was as Stenographer IV in the Administration Office of the Pharmacy Department. Complainant's job duties included preparation of time cards, among other duties. Complainant was the timekeeper of her unit.
4. On or about February 27, 2004, the Deputy Director of Support Services and others observed Complainant in attendance at an off-site party during the time she was scheduled to be on duty at Respondent.
5. Complainant's timecard reflected that Complainant had ended her work day on Friday February 27, 2004 at 21.4 hours. Complainant was credited with 6.4 hours of overtime, which included the time in which she had been seen in attendance at the off-site party.
6. The supervisor at the workplace for whom Complainant was alleged to have worked, was unable to verify that Complainant had worked under that individual's supervision on February 27, 2004.
7. Under Respondent's *Rules and Regulations Governing Employee Conduct, Policy #06-10-27*, employees are prohibited from misusing timekeeping methods or facilities by intentionally punching the timecard for another employee or by altering or falsifying time sheets, cards or other records.
8. Complainant was discharged from her position, effective April 2, 2004, for misuse of timekeeping facilities or records and for altering or falsifying time sheets, cards or records, conduct that was violative of Respondent's rules.
9. Deborah A. House, Clerk V, is not similarly situated as she held a different position than Complainant and there is no evidence in the record showing that she engaged in similar misconduct.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this Complaint.
2. Respondent is an employer as defined by section 5/2-101(B)(1) of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*
3. Complainant is an aggrieved party as defined by section 5/1-103(B) of the Act.
4. This record presents no genuine issues of fact as to whether Respondent's proffered reasons for discharging Complainant were pretext.

DETERMINATION

Respondent is entitled to summary decision in its favor on all claims.

DISCUSSION

Respondent is a public hospital operated by Cook County, Illinois. Complainant's national origin is Mexico and her ancestry is Hispanic. Complainant began her employment with Respondent on July 31, 1989. At all relevant times, Complainant's position was as Stenographer IV in the Administration Office of the Pharmacy Department. Complainant was the timekeeper of her unit. Complainant's job duties included preparation of time cards, among other duties. Complainant was discharged from her position effective April 2, 2004.

Complainant's Complaint consists of two counts of discrimination. Count I alleges that Complainant was discharged based on her national origin. Count II alleges that Complainant was discharged based on her ancestry.

A Complainant bears the burden of proving discrimination by the preponderance of the evidence. Section 5/8A-102 (I) (1) of the Act. That burden may be satisfied by direct evidence that adverse action was taken for impermissible reasons or through indirect evidence in accordance with the method set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 793, 93 S. Ct. 1817 (1973), and *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 101 S. Ct.

1089 (1981). This indirect method of proof has been approved by the Illinois Supreme Court and adopted by the Commission in *Zaderaka v. Illinois Human Rights Commission*, 131 Ill. 2d 172, 545 N.E.2d 684 (1989).

Under this three-step method, a complainant must first establish a *prima facie* case of unlawful discrimination. Then, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its adverse action. Once the respondent successfully makes this articulation, the presumption of unlawful discrimination drops and the complainant is required to prove, by a preponderance of the evidence, that the respondent's articulated reason is a pretext for unlawful discrimination.

Complainant attempts to prove discrimination by the indirect method. Pursuant to this method, Complainant must show that (1) she is a member of a protected class, (2) she was treated in a particular manner by Respondent, and (3) similarly situated employees outside her protected class were treated more favorably. *Turner-Hiner and Illinois Children's School and Rehabilitation Center*, IHRC, ALS No. 6170, July 2, 1997; *Moore and Beatrice Food Co.*, IHRC, ALS No. 2141, May 12, 1988.

The first element is undisputed: Complainant is a member of the protected classes due to her ancestry, Hispanic, and her national origin, Mexico. The second element, too, is undisputed: Complainant was discharged on April 2, 2004.

For her third element, Complainant alleges that a co-worker, Deborah House, who held the position of Clerk V, was similarly situated to her and was not discharged. Respondent argues that Complainant fails to put forth any evidence supporting that House was similarly situated to her for this *prima facie* comparison. Respondent's position is well taken. Complainant failed to submit any response to the motion and Complainant's own allegation in the Complaint identifies House as holding a different position than Complainant. Based on these undisputed facts, Complainant fails to meet her burden of putting forth a *prima facie* case of discrimination.

Notwithstanding her failure to meet her burden of putting forth a *prima facie* case, Respondent argues that, even if Complainant could meet her *prima facie* burden, the undisputed facts show that Complainant was discharged for a legitimate non-discriminatory reason and Complainant failed to put forth any evidence of pretext.

Respondent presents the affidavit of James Dyson, who avers that he has been the Manager of Labor Relations for Respondent since November 17, 2003. Dyson avers that on or about February 27, 2004, the Deputy Director of Support Services and others observed Complainant in attendance at an off-site party during the time she was scheduled to be on duty working; that Complainant's timecard for that day reflected that Complainant had ended her work day at 21.4 hours; and that, based on the timecard, Complainant was credited with 6.4 hours of overtime, which included the time in which she had been seen in attendance at the off-site party. Dyson further avers that the supervisor at the workplace for whom Complainant was alleged to have worked during that time was unable to verify that Complainant had worked under that individual's supervision on February 27, 2004.

Respondent presents its Exhibit B, Respondent's *Rules and Regulations Governing Employee Conduct*, Policy #06-10-27. The document provides at Section I.B. 8., that employees are prohibited from misusing timekeeping methods or facilities by intentionally punching the timecard for another employee or by altering or falsifying time sheets, cards or other records. Dyson avers that Respondent discharged Complainant from her position effective April 2, 2004, for misuse of timekeeping facilities or records and for altering or falsifying time sheets, cards or records.

Complainant submits absolutely nothing to dispute these averments. Although there is no requirement that Complainant prove her case to overcome a motion for summary decision, Complainant is required to present some factual basis that would arguably entitle her to a judgment under the law. *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill.App.3d 640, 411 N.E.2d 1168 (1st Dist. 1980). Here, Complainant submits nothing to refute Dyson's averments.

Thus, the statements stand unrebutted and must be accepted as true. *Koukoulomatis v Disco Wheels*, 127 Ill. App. 3d 95, 468 N.E.2d 477 (1st Dist 1984). A party cannot rely on her pleadings to create a genuine issue of fact where the moving party supplies sworn facts which would warrant judgment in its favor as a matter of law. *Fitzpatrick v Human Rights Commission*, 267 Ill. App. 3d 306, 642 N.E.2d 486, (4th Dist 1994).

Respondent has put forth admissible undisputed evidence that its discharge decision was not based on Complainant's national origin or ancestry, but was based on legitimate, job related reasons. Thus, Respondent is entitled to summary decision as no material issues of fact remain as to Complainant's claims. Due to this decision, all previously scheduled status dates are stricken.

RECOMMENDATION

Accordingly, I recommend that the Complaint and underlying Charges be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

May 25, 2010

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section